IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

MONDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND SIX

P R E S E N T

THE HON'BLE SRI JUSTICE N.V. RAMANA

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WP.No.18447 OF 2006

Between:

P. Venkateswara Prasad … Petitioner

Versus

Chief General Manager, HRD
APSPDCL, Tirupati,
Chittoor District & Ors. … Respondents

Counsel for the Petitioner: Sri K. Rajanna

Counsel for the Respondents: Sri Samineni Kishore

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.18447 of 2006

ORDER :

This writ petition is filed questioning the Memo No. CGM/HRD/DS/AS-III/PO(DC)/F.122-TPT/D.No. 1055/06, dated 02-8-2006 issued by the first respondent and the consequential letter No.DEE/O/RJP/JAOCAS/C1/F/D.NO.3214/06, dated 21-8-2006 and Lr. No. DEE/O/RJP/JAO/ADM/S1/F/D.No. 3213/06, dated 21-8-2006 issued by the third respondent against the petitioner ordering recovery of Rs. 3,17,058/- from the salary of the petitioner on the ground that he has not properly executed Work Order No. 3974/04-05 during his tenure as Assistant Divisional Engineer/OCC/Vontimitta and he is responsible for shortages of Iron scrap and discs amounting to Rs. 3,17,058/-.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The main contention advanced by the learned counsel for the petitioner is that since the petitioner is holding the post of Divisional Engineer, as per the A.P. State Electricity Board Employees Conduct Regulations, the competent authority to initiate any disciplinary action against the petitioner is the Chairman and the third respondent has no authority or power to issue impugned order, ordering recovery of the amount from the salary of the petitioner. He further submitted that the third respondent without conducting any enquiry and without issuing any show cause notice to the petitioner, has passed the impugned order, and the same is vitiated.

The respondents filed counter affidavit. Reiterating the

counter averments, the learned Standing Counsel for the respondents submits that since the petitioner was holding the post of Assistant Divisional Engineer/OCC/Vontimitta, at the relevant point of time, and as he was subordinate to the third respondent herein, the third respondent is entitled to take action against the petitioner. He further submits that to safeguard the interest of the department, instead of initiating disciplinary action against the petitioner, they have ordered recovery of an amount of Rs.3,17,058 towards shortage of iron scrap and discs in Circuit from the salary of the petitioner. He further submits that the matter was brought to the notice of the higher authorities and it was decided to conduct joint survey to ascertain exactly as to how many supports are available in the field, in the presence of the present Assistant Divisional Engineer/OCC/Vontimitta and the petitioner, but the petitioner did not turn up.

Replying to the stand of the respondents in their counter, the learned counsel for the petitioner submitted that the joint survey was meant only for ascertaining the balance work, which was required to be executed, and no notice whatsoever was given to the petitioner requiring him to attend for the joint survey.

In the light of the rival arguments, two points arise for consideration – (a) whether the third respondent conducted any enquiry before issuing the impugned order, ordering recovery of the amounts mentioned therein, from the salary of the petitioner, and if so, whether the third respondent is empowered to issue the impugned order.

The learned Standing Counsel for the respondents fairly admitted that no enquiry whatsoever was conducted against the petitioner before passing the impugned orders. He however,

submitted that the enquiry was dispensed with only to save the image of the respondents-APSEB. This contention of the respondents cannot be allowed to be countenanced. When an order affecting the rights of a party is to be made, the principles of natural justice demand, conduct of enquiry and issuance of notice. Since the impugned order, which is in the shape of a final order, came to be passed by the third respondent without initiating any enquiry, the same is liable to be set aside, for it violated the principles of natural justice.

The learned Standing Counsel for the respondents though admitted that under the A.P. State Electricity Board Employees Regulations, the petitioner being a Divisional Engineer, the authority competent to initiate disciplinary action is only the Chairman, he however, contended that since the shortages relate to the period when the petitioner was Assistant Divisional Engineer, the third respondent being superior to him, had power to take action against the petitioner, and in exercise of such power, he had issued the impugned order. I am unable to accept such a contention. When an action is to be initiated against an employee, the position in which he is working at the time of initiation of such action is important. The petitioner, admittedly, is working as Divisional Engineer. May be, the irregularities relate to the period when the petitioner was working as Assistant Divisional Engineer, but that by itself does not give any power to the third respondent, who is also holding the post of Divisional Engineer, to initiate action against an officer, who is of the same cadre. This apart, under the A.P. State Electricity Board Employees' Conduct Regulations, the authority competent to initiate action against the Divisional Engineer, is the Chairman, and as such, the impugned order passed by the third

respondent, ordering recovery of the amounts mentioned therein from the salary of the petitioner, is wholly without jurisdiction.

For the foregoing reasons, the impugned order cannot be sustained, and the same is accordingly set aside. The Chairman of the respondent-Organization is directed to conduct detailed enquiry into the matter for causing loss to the department to a tune of Rs.3,17,058/- and pass appropriate orders in accordance with law after issuing necessary notice and affording reasonable opportunity to the petitioner to put forth his grievance, and the petitioner is always at liberty to submit his explanation to the charges levelled against him.

With the above directions, the writ petition is allowed. No costs.

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N.V. RAMANA, J.

DECEMBER 18th, 2006.
I S L / N S R.